



Missouri Department of Natural Resources

MISSOURI CLEAN WATER COMMISSION MEETING

July 18, 2001

Hannibal Inn & Conference Center, Hannibal, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Bill Bryan, Assistant Attorney General, Jefferson City, Missouri
Mark Buehrer, 2020 Engineering, Inc., Bellingham, Washington
Robert Brundage, PSF and MoAG, Princeton, Missouri
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Irene Crawford, Department of Natural Resources, Macon, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Rhonda Ferrett, City of Lake St. Louis, Lake St. Louis, Missouri
Carol Garey, Department of Natural Resources, Jefferson City, Missouri
James Gasich, City of Lake St. Louis, Lake St. Louis, Missouri
Ray Grossmann, Lake St. Louis Community Association, Lake St. Louis, Missouri
Ron Hansen, Missouri Department of Conservation
Tad Kardis, Assistant Attorney General, Jefferson City, Missouri
Sallie Keeney, REGFORM, Jefferson City, Missouri
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri
Jessica Little, Department of Natural Resources, Jefferson City, Missouri
Bruce Litzsinger, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Jim Macy, Department of Natural Resources, Kansas City, Missouri
John Madras, Department of Natural Resources, Jefferson City, Missouri
Ken Midkiff, Sierra Club, Columbia, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Donald C. Pesek, Alliance Water, Columbia, Missouri
Bernie Rains, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Paul W. Schattgen, Lake St. Louis, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Rebecca Shirley, BNIM Architects, Kansas City, Missouri
David Shorr, Lathrop & Gage, Jefferson City, Missouri

Michael R. Sieczkowski, Regenesys Bioremediation Products, Lenexa, Kansas
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Troy D. Vassos, NovaTech Consulting, Vancouver, British Columbia
Diane Waidelich, Secretary, Missouri Clean Water Commission

Llona Weiss, Department of Natural Resources, Jefferson City, Missouri
J. Brad Willett, BASF Corporation, Hannibal, Missouri
Bob Williamson, Kansas City Water Services, Kansas City, Missouri
Bob Ziehmer, Department of Conservation, Jefferson City, Missouri

Chairman Herrmann called the meeting to order at approximately 9:05 a.m. and introduced Commissioners Greene; Perry, Kelly, Hegi and Engineering Section Chief, Randy Clarkson; and Secretary, Diane Waidelich. Assistant Attorney General, Tad Kardis, was present for Deborah Neff. Commissioner Minton was not present.

Administrative Matters

Final Action on Proposed Amendment to 10 CSR 20-4.023 State Forty Percent Construction Grant Program

Ann Crawford, Water Pollution Control Program Financial Services Section, reported no comments were received during the comment period on this Proposed Amendment. Staff proposed changing the definition of eligible recipient to include public water supply districts that operate sewer systems so that they can receive the forty percent grants. Ms. Crawford requested approval of the Proposed Amendment.

Commissioner Hegi moved to **adopt the Proposed Amendment to 10 CSR 20-4.023 as proposed by staff**; seconded by Commissioner Greene and unanimously passed.

Final Action on Proposed Amendment to 10 CSR 20-4.043 Hardship Grant Program

Ann Crawford, Water Pollution Control Program Financial Services Section, reported staff proposed to use an average of three consecutive months for unemployment data allowing the more recreational communities to compete for funds. No comments were received during the comment period and Ms. Crawford asked for approval of the Proposed Amendment.

Commissioner Greene moved to **adopt the Proposed Amendment to 10 CSR 20-4.043 as proposed by staff**; seconded by Commissioner Perry and unanimously passed.

Final Action on Williamsville Variance Request

Richard Laux, Water Pollution Control Program Permits Section, stated the commission gave preliminary approval to this variance request at its May 23 meeting. A variance request was made from the deadlines associated with the state construction grant process. Mr. Laux recommended conditions as follows: within nine months of the variance approval, the city obtain approval of all the documents, and construction be completed within 12 months of approval of the variance request. No comments were received as a result of the public notice. Mr. Laux requested final approval of the variance request.

Chairman Herrmann noted he asked about the two-cell lagoon at the May meeting. He continued that there was no indication that a determination about the amount of siltation in the lagoon had been taken into consideration and that the effectiveness of the treatment system had not been compromised by siltation. Chairman Herrmann asked if there are any records about the quality of the discharge.

Mr. Laux replied basically they are in compliance with the conditions of their current permit.

Chairman Herrmann noted this is by their reporting.

Mr. Laux noted this is correct and significant noncompliance has not been shown. The main purpose of the project is to eliminate the bypasses associated with wet weather.

Chairman Herrmann suggested a new engineering report be completed taking into consideration all of the factors of the system. He noted he does not believe they have done a good job of evaluating the total project and he questioned why a 15,000 gpm outfall pump station is needed for a population of 429 people.

Mr. Clarkson stated this project is a little unusual. Staff engineers reviewed the project and concurred that it was acceptable to proceed. Mr. Clarkson noted he does not recall if the engineering report contained information on the sludge issue. He stated, although it looked awkward to upgrade the influent lift station before doing I/I work, from the standpoint of the size of the project and the amount of money you can afford to spend on engineering in a small town, it was acceptable to proceed in this manner. Mr. Clarkson noted staff routinely asks the sludge depth be checked if it is a project of upgrading a wastewater treatment facility but this project was for infiltration/inflow and it might not have been looked at. Three cells are required for new facultative lagoons but those that are in compliance with effluent limitations are not routinely required to upgrade.

Chairman Herrmann noted he is not concerned about the sludge depth but rather the silt depth because of the amount of infiltration over 25 years.

Commissioner Greene stated this variance request was made due to a timing issue and asked if it is appropriate to ask that the project be reexamined after it has been approved.

Mr. Laux commented this issue does not involve the lagoon but the collection system and the pump station. If the commission wants to look into this, the city could appear at the next meeting.

Commissioner Perry asked if there would be a problem with delaying action until the next meeting.

Ms. Crawford noted the project will be delayed and bypassing continues when it rains.

Chairman Herrmann asked if the grant amount would be impacted if the variance were approved with the condition that a complete analysis of the project be completed.

Ms. Crawford replied there is a balance that would probably cover forty percent of an engineering report. An increase would need to be approved later.

Chairman Herrmann suggested granting the variance with the condition that the engineer be required to do a complete analysis of the total project.

Ms. Crawford noted there is the question of whether the city can afford the other sixty percent.

Mr. Laux stated if the commission proposes to add a condition, this intention should be public noticed so the city has time to assess it.

Commissioner Greene noted her disagreement with adding conditions at this time that could lead to nothing being done.

Mr. Laux noted since the city is not present, they should be given the opportunity to address this issue.

Chairman Herrmann stated their remediation dollar amount is a pure guess because they have done no testing.

Mr. Laux replied staff reviewed the deadline issue.

Responding to Chairman Herrmann's question, Ms. Crawford noted a 60-day delay would not affect the grant monies.

Chairman Herrmann suggested tabling action and notifying the city the commission will discuss its concerns regarding the total project with them in 60 days.

Commissioner Hegi moved to **table action on the Williamsville Variance Request until the September 19 meeting**; seconded by Commissioner Perry and passed with Commissioner Greene voting against.

Preliminary Staff Recommendation on Missouri Department of Conservation Kansas City Discovery Center and Metro Offices Variance Request

Mr. Laux reported a variance application was received May 24, 2001 from the Department of Conservation regarding a proposed wastewater treatment facility for the new Discovery Center and their Metro Center in Kansas City. The request asks for relief from the metropolitan no-discharge requirements of 10 CSR 20-7.031. Those rules prohibit construction and operation of new wastewater treatment facilities that would discharge to the listed metropolitan streams.

Mr. Laux reported staff conducted an evaluation of the proposal with the following findings:

1. The receiving stream, Brush Creek, has had water quality problems due to inadequately treated sanitary sewage discharges. It is a highly modified urban stream that has considerable recreation use along portions of the stream.
2. The proposal is to build a treatment system capable of meeting advanced treatment levels listed as 10 mg/l biochemical oxygen demand, total suspended solids and oil and grease. The proposed discharge would normally be directed to a combined sanitary and storm sewers operated by the city of Kansas City. During periods of combined sewer overflow, the effluent from the treatment plant would be directed to Brush Creek to avoid contributing to the combined sewer overflow and having more raw sewage bypass.
3. Because this is a new proposal and is for a discharge to a metro no-discharge stream, staff has not received an engineering report nor conducted an evaluation of the actual treatment system nor have plans and specifications been submitted for review. The concept has to be approved before staff can review items associated with the construction permit process.
4. Staff has coordinated with the City of Kansas City and has confirmed their support of this proposal.
5. The statutory language does not allow a permanent variance to be granted.
6. Staff is concerned that approval of the variance will be misinterpreted as an approval of a specific treatment technology for use on a metro no-discharge stream or as a blanket approval of projects proposing to allow discharges for educational benefits.

Mr. Laux recommended approval with some reservations. Staff supported the concept of mitigating the effects of combined sewer overflows on receiving streams. This proposal appears to present an opportunity to reduce the amount of sewage and stormwater bypassed. Staff supported the concept of the educational benefits.

Approval was recommended with the following conditions:

1. Approval of the request for a five-year period with an opportunity at that time to request an extension. Staff would review the circumstances to determine whether the variance is still appropriate, for example whether the combined sewer overflow might have been eliminated.
2. That the operating permit be based on meeting the advanced levels indicated in the request and include effluent, and possibly in-stream, monitoring during periods of direct discharge.
3. Inclusion in the approval of a statement indicating that neither the treatment system nor technology is approved, only the concept of discharging wastewater that has received advanced treatment during periods of combined sewer overflows.

Ron Hansen, Administrative Architectural Chief for the Missouri Department of Conservation, thanked the commission for reviewing the variance application for the solar aquatic wastewater treatment system. He continued this facility will house staff from the Missouri Department of Conservation and the Missouri Department of Natural Resources and the educational component of this sewage treatment system will be a win-win situation for both departments.

Rebecca Shirley, project architect with BNIM, explained the educational aspects of the project. She noted the most obvious of these is the wastewater treatment facility. This living machine is designed to almost replicate the process that nature uses to clean the water, recycle and reclaim the water. Part of this reclaimed water will be sent to the wetland area being built for children to understand what Missouri wetlands are like. This variance request has been filed in order to use some of this water in those wetlands.

Mark Buehrer, 2020 Engineering, reported the living machine where the treatment will occur is located in the center lobby area of the building and will be enclosed in a greenhouse. Water from all the toilets and sinks in the building will be treated and recycled and will then flow through a constructed wetland. The water will then flow out of the pond back to the reclaimed water room within the building. A second disinfection will occur at this time. This water will primarily be used to flush the toilets where it will be retreated and reused. The additional amount that is available is proposed to be used to keep adequate water in the wetlands and stream during times of evaporation from the system.

Commissioner Hegi asked if there is a septic tank in this system.

Mr. Buehrer responded the system receives primary treatment from a septic tank. The living machine gives the system secondary and tertiary treatment.

Commissioner Hegi asked if the primary basis for the system is to recycle water.

Mr. Buehrer noted it recycles the water and it also eliminates putting the drinking water in the toilets. Reclaimed water is used in the toilets. This also reduces the demand for water within the building.

Troy Vassos, NovaTech Consulting, reported the only water that is discharged is the water used to wash hands or that used for other types of direct contact in the building. This is the water that will discharge to Brush Creek. Under normal conditions, this water would go back to the sewer system.

Mr. Buehrer stated the system is connected to the existing city sewer. During the winter, the water that is not used for flushing toilets overflows to the city sewer but this amount is reduced.

Dr. Vassos noted the only time there will be a discharge to the constructed wetlands is when the water level would drop. Water would be added to make up for that drop in the water level but not allow a discharge. A discharge would occur only under conditions of high rainfall. This causes a concern that water that would run into the basin would overflow into the storm system.

Commissioner Perry asked if there is a levee between the pond and Brush Creek.

Ms. Shirley informed the commission the Missouri Department of Conservation property is connected to the Kaufmann property. When the Conservation pond overflows, it goes into the Kaufmann pond and then into Brush Creek.

Commissioner Perry asked if it is possible to build a levee to withstand the one in a hundred year flood.

Dr. Vassos replied the only time this would actually overflow into the storm system is under high flow conditions.

Commissioner Perry asked if it wouldn't be more protective if the land area where the overflow to the pond occurs was slightly built up.

Mr. Buehler responded the overflow in the constructed wetlands is already raised up. The water typically does not run over except for a very significant rainfall amount.

Ms. Shirley stated this is a concrete inlet and as the pond reaches a certain elevation, water will flow through holes in the side.

Commissioner Perry asked for rainfall calculations.

Mr. Buehler explained rainfall and evaporation calculations that show additional water will be needed from June through August. The extra water from the building's system should nearly make up for this deficiency.

Dr. Vassos explained, because of the constructed wetlands, plants have a very restricted range of water levels they grow in so there is not a lot of extra storage volume.

Commissioner Perry noted if the site was raised, an even higher percentage of overflow would be eliminated.

Mr. Hansen added that during the rising water levels the system would not be contributing to the city's combined sewer overflow because this water is already in the wetland.

Mr. Buehler stated during the summer about two inches of freeboard will be left. The amount of water added to the system will only raise the level about one-sixteenth of an inch. There will be opportunities for students to do monitoring of the systems.

Commissioner Perry noted this kind of education is very important.

Mr. Buehler stated if the two inches is left, there is still capacity to fill the pond and water wouldn't be added for a few weeks.

Commissioner Hegi asked what the purpose of the pond on the Kaufmann property is.

Ms. Shirley responded this is a man-made pond for enjoyment, which is very different from the conservation pond that will replicate a wetland.

Commissioner Hegi suggested an agreement with the adjacent property owner to lower the level of the pond.

Mr. Buehler noted there isn't overflow from that big pond during the summer so there is a naturally built in buffer.

Commissioner Perry asked if the adjacent property owner is aware of the potential for overflow.

Mr. Hansen replied they have reviewed and approved the plans through their consultants.

Mr. Buehler stated the Kaufmann property large pond has an overflow and the water level is typically quite a bit below the overflow. They pump water to an upper pond to a waterfall.

Chairman Herrmann noted the commission needs to consider the variance request for the occasional discharge to Brush Creek.

Commissioner Perry asked what type of rainfall event would cause an overflow.

Mr. Buehler noted if it was set for two inches of freeboard that would be a two-inch or more rainfall. There is a possibility for a little bit more than two inches.

Dr. Vassos noted there are two treatment plants in one. The man-made mechanical component achieves tertiary treatment and the wetland component is a tertiary system with an internal recycle.

Mr. Laux reviewed the conditions staff proposed for approval of the variance.

Commissioner Hegi moved to **approve the staff recommendation regarding the Discovery Center variance request**; seconded by Commissioner Kelly and unanimously approved.

Mr. Buehler noted that the condition wasn't worded specifically to allow discharge when it is really dry.

Commissioner Hegi noted a project in Texas diverted water from a parking lot into a grass filter strip and it was unbelievable what that grass filter strip did.

Mr. Hansen noted this facility's parking lot also has this same concept built into it.

Mr. Laux noted the commission's intention to approve the variance request at the September meeting will be public noticed.

Commission Action on Matters to be Referred to the Office of the Attorney General

Hydeaway Mobile Home Park

Kevin Mohammadi, Chief of the Water Pollution Control Program Enforcement Section, reported the Hydeaway Mobile Home Park is a small residential facility located at Fenton in

Northern Jefferson County. A single cell wastewater lagoon serves the facility which, until September 15, 2000, operated under a Missouri State Operating Permit. The lagoon discharges to a wet-weather tributary to the Meramec River and is wholly incapable of providing the necessary treatment to discharge at this location. The facility was last inspected December 1998 but contacts with staff of the regional office have been numerous since that time. The permit is currently expired and no application for renewal has been submitted.

The permit contained a condition requiring connection to sewers should they become available. In September 1997, sewers did become available but despite many reminders of this permit condition from department staff, the party has refused to connect to public sewers only 129 feet away. In addition, the party has also violated the permit by failure to consistently submit complete discharge monitoring reports.

The Water Pollution Control Program sent the party an offer to enter into a Settlement Agreement in April 2001. This offer included the party making the necessary sewer connection and closing the present sewage treatment lagoon, in addition to a negotiated penalty payment. In May 2001, having received no response to the letter, Water Pollution Control Program staff made a routine follow-up call to the permittee. The party exploded on the phone with obscene expletives and threats of repeated physical violence.

Mr. Mohammadi requested referral of this matter to the Attorney General's Office so legal action can be taken to ensure the party complies with the requirement to connect to the sewers and to pay penalties for the violations.

No one was present representing Hydeaway Mobile Home Park.

Commissioner Kelly moved to **refer Hydeaway Mobile Home Park to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Perry and unanimously passed.

Jurgensmeyer Farms

Mr. Mohammadi reported the Jurgensmeyer Farms consist of four separate farms, each with the capacity to be a class 1C CAFO. Together the four farms handle about 500,000 turkeys per year. Joe Jurgensmeyer operates one, his sons Scott and Bart operate one additional farm each, and his son-in-law Jim Davis operates the fourth. Joe Jurgensmeyer also contracts another 500,000 turkeys to other growers.

In September 2000, the Missouri Department of Agriculture received a complaint about the Jurgensmeyer farm, including the existence of open trenches filled with dead turkeys. The

Department of Agriculture entered the property on September 6, 2000 and took photographs of the trenches that were discharging a black liquid.

In October 2000, Missouri Department of Natural Resources staff performed an inspection of three of the four farms owned by the Jurgensmeyer family. The Davis farm had recently had an avian cholera outbreak and was not inspected. At one of the trenches that Scott Jurgensmeyer, Bart Jurgensmeyer, and Jim Davis utilize to dispose of dead turkeys, a discharge sample was collected. Once analyzed, it was discovered that the effluent violated water quality standards. Personnel conducting the investigation believed the discharge had been occurring for quite some time as evidenced by dead trees and other vegetation. On October 19, 2000, a second inspection was conducted including surveillance of a second open pit used only by Joe Jurgensmeyer. It had similar characteristics to the first, including a discharge that was killing vegetation.

On October 30, 2000, the Missouri Department of Natural Resources conducted a third inspection of the Jurgensmeyer family farms. NOVs were issued to each farm for placing a contaminant where it is reasonably certain to cause pollution and operation of a class 1C CAFO without a permit.

The four family farms are separate entities, but sell or trade items such as feed, manure, or services to each other, such as use of the open pits. The department offered to resolve the violations with each farm through out of court settlements. The proposed Settlement Agreements included a civil penalty to each farm and required each to obtain a permit for operation, and remediate the sources of pollution. The department met with the attorney representing the four farms to discuss the provisions of the agreement and the civil penalty. Each farm made a counter offer to pay the civil penalty, which the department considered unacceptable. When informed of the department's position, the attorney refused to negotiate further. The department has expended a considerable amount of conference, conciliation and persuasion to resolve the violations of Missouri Clean Water Law at the Jurgensmeyer Farms, but to no avail. Mr. Mohammadi recommended referral of the matter to the Attorney General's Office.

Responding to Commissioner Greene's question, Mr. Mohammadi noted the penalty is the only area of disagreement.

Commissioner Perry asked if remediation has been done.

Mr. Mohammadi responded the open trenches have been closed.

Commissioner Perry asked if they have a Class I CAFO permit.

Mr. Mohammadi responded they have applied for a permit.

Commissioner Hegi asked if refusal to pay the fine is the only issue holding up resolution.

Mr. Mohammadi stated they have refused to negotiate a reasonable penalty.

David Shorr, Lathrop & Gage, informed the commission his clients take this matter seriously. He asked that the commission closely scrutinize the department's request for referral and direct the department to conduct a fair and reasonable conference, conciliation and persuasion and negotiation. Mr. Shorr stated his clients have expended considerable sums of money to immediately build dead animal compost facilities with the concurrence of the Missouri Department of Agriculture and the Missouri Department of Natural Resources. He stated there is no evidence of contamination to any water of the state of Missouri and he disagrees with the department's belief that if anything occurs in the state, jurisdiction applies under Chapter 644. Mr. Shorr noted they believe the violations are unsubstantiated and overstated and the penalty demand is exorbitant. He continued that the Jurgensmeyers are very proud of their operation and of the fact that they've been able to compete in the land of corporate giants. Mr. Shorr noted despite the fact that they believe there were no violations and that the environmental issues presented by the department were properly addressed, they offered to address all of the department's concerns. A fair offer was made to the department that was rejected with no counteroffers. Mr. Shorr noted the parties have no problems with what they've been asked to do but will not seek settlement regarding the current amount of money. He asked the commission review the details of this case thoroughly before referral.

Chairman Herrmann noted the waters of the state are not just surface water but also groundwater.

Mr. Shorr replied that due to the fact that the pits retain water he believes there has not been contamination of any waters of the state. The concern is that these facilities were not located inappropriately. The report from the Department of Agriculture indicated the biggest failure with respect to the location of the pits was that they were too close to one another. Being located on high ground with dense soils was appropriate. Mr. Shorr noted he believes his clients' offer was substantial in light of evidence that exists and how they responded.

Commissioner Perry asked Mr. Shorr to elaborate on his statement that there has not been a discharge event.

Mr. Shorr replied the area where the pits were located was high ground completely surrounded by the Jurgensmeyer farms. There were no streams or water courses directly adjacent to the pits. Mr. Shorr continued the department's evidence he has seen is that they believe there was a runoff of 200 feet but there is no evidence of those reaching any waters of the state. There is also no evidence of groundwater contamination. Mr. Shorr noted the Jurgensmeyers do not believe they contaminated any waters of the state but believe it is a legitimate enough issue to make an offer.

Chairman Herrmann asked if they contend that waters in these pits did not percolate out of the pits.

Mr. Shorr replied there is no evidence of this occurring.

Commissioner Perry asked if any tests have been conducted.

Mr. Shorr responded he is not aware of any tests and that is one of the reasons a penalty solution was offered.

Commissioner Hegi asked if it is appropriate for the commission to know what the offer and counteroffer was.

Mr. Shorr indicated it would not be appropriate. The parties do not agree on the dollar amount but both offers were substantial.

Chairman Herrmann asked if one of the purposes of referring to the Attorney General is to seek an opinion on settlement amounts.

Mr. Bryan responded they could conduct an assessment of the case to determine an appropriate resolution.

Chairman Herrmann noted rather than the commission making a decision it would be appropriate for the Attorney General to decide what is a reasonable offer.

Mr. Bryan reiterated an assessment could be done.

Mr. Shorr noted the amount of settlement is at issue along with which general permit is required because the parties disagree with how the animal count was done.

Commissioner Perry noted she would like to be able to decide if there has been a discharge event that would give the commission jurisdiction to take action. She asked if this is dependent on which type of permit they have.

Mr. Bryan responded it is not.

Mr. Shorr stated there is an ongoing discussion over what constitutes reasonably certain to pollute. Staff say any event that occurs is reasonably certain to pollute which is a legal question, not an event question. Mr. Shorr noted there is an event but is it an event that reaches the jurisdiction of the Clean Water Law is where the dispute lies.

Responding to Commissioner Perry's question, Mr. Mohammadi stated the sample was collected from the discharge, not from the pit. He continued that if staff knew that waters of the state had been polluted, they would state "caused" pollution of waters of the state not "reasonably certain to cause."

Commissioner Greene stated it appears negotiations have stopped and the only way to move forward is to refer to the Attorney General's Office.

Mr. Bryan responded staff always has the option of deciding there was not a violation and that the matter should not be referred but that is not at issue. He noted there are some factual issues involved. He provided photographs to the commission to give them an idea of the situation.

Commissioner Hegi asked if the die off in the pits is related to daily die off or due to an outbreak of disease.

Mr. Shorr responded the Davis farm did have an outbreak of disease but the majority is standard disposal of dead animals. He continued that his clients are not asking that they not be referred but they wanted the commission to understand they immediately and properly responded to the department's issue. The primary issue is the penalty demand and amount. They are not a recalcitrant party questioning the department's positions but there is a dispute on how to come to final resolution. Mr. Shorr stated it is very important to the parties that the commission understand this but they believe the financial demands being made are not appropriate.

Commissioner Perry asked if Mr. Shorr believes if the sort of impasse being discussed can best be resolved in a court of law.

Mr. Shorr responded he doesn't believe the parties dispute this. They wanted to make sure the commission understood the nature of the dispute and where the context of the referral is coming from. Mr. Shorr noted there is a big difference in not being willing to do something versus not agreeing on what a penalty demand is or the administrative response.

Commissioner Greene moved to **refer the Jurgensmeyer Farms to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Kelly and unanimously passed.

Savannah Ridge

Savannah Ridge is a residential subdivision located in the City of Jackson. The nearest receiving stream is an unnamed tributary to Goose Creek, a class C stream. The department's Southeast Regional Office received a complaint from an adjacent landowner

that sediment was washing off of this property onto the adjacent property. In April 2000, Southeast Regional Office staff inspected the site and found that more than five acres of land had been cleared without a land disturbance permit and adequate erosion control measures had not been constructed. The design of the storm water drainage system created a discharge that threatened downstream communities with flooding and erosion. On May 19, 2000, staff issued a Notice of Violation for land disturbance without a permit and failure to use adequate erosion control measures.

On May 19, 2000, a General State Operating Permit was issued. During subsequent inspections it was noted that little progress was made. There were still no adequate erosion control structures or detention structures for storm water discharge. Further complaints came from a second landowner that silt and sediment were still being deposited on adjacent properties because the collection system pipe discharged directly onto those properties. Two more Notices of Violation were issued for permit violations including failure to use adequate erosion control measures.

On February 23, 2001, the owner was issued a land disturbance permit for Lacy Street Improvements, which is a contiguous tract of the Savannah Ridge development. During an inspection on April 3, 2001, it was found that the owner had committed the same violations as those discovered at Savannah Ridge Phase III. He had once again constructed a collection system that was discharging sediment and stormwater onto adjacent landowners, the erosion control measures were inadequate, and there was not a Storm Water Pollution Prevention Plan developed as required by the permit.

The department offered to settle the matter out of court. The settlement would have included a schedule of tasks to complete in order to bring the site back into compliance and would have required payment of a civil penalty. The developer's attorney requested and was sent a copy of the proposed Settlement Agreement. A response was not received until the attorney had been contacted twice by the department. When a response was received, the attorney claimed his client would not pay a penalty. The department addressed the changes to the proposed agreement, and reiterated that a penalty would be required. The attorney was granted three extensions by the department. To date, there has been no further correspondence from the attorney.

Mr. Mohammadi stated the department has expended a considerable amount of conference, conciliation and persuasion to resolve the violations of the Missouri Clean Water Law at Savannah Ridge. He requested referral of the matter to the Attorney General's Office.

No one was present representing Savannah Ridge.

Commissioner Perry noted quicker action needs to be taken to get resolution, particularly in the land disturbance matters, to prevent pollution coming from these activities.

Mr. Mohammadi noted he agrees and believes one or two inspections should be done in a short period of time by the regional office prior to referral to central office.

Chairman Herrmann noted the land disturbance permit includes erosion control procedures but in many cases these have been neglected or refused to comply with the erosion control devices.

Commissioner Greene moved to **refer the Savannah Ridge Phase II & Lacy Street Improvements to the Office of the Attorney General for appropriate legal action;** seconded by Commissioner Perry and unanimously passed.

Stone Ridge Canyon

Mr. Mohammadi reported department staff has reached tentative settlement agreement on the Stone Ridge Canyon matter. He recommended referring the matter contingent upon no final agreement being reached by August 18, 2001.

Chairman Herrmann asked what watershed this entity is located in.

Mr. Mohammadi stated it is in McCoy Creek and Cuivre River.

Commissioner Hegi asked what best management practices are required.

Mr. Clarkson responded the best practice is not to have any more area than necessary devoid of vegetation.

Commissioner Greene moved to **refer the Stone Ridge Canyon matter to the Office of the Attorney General if agreement is not reached within 30 days;** seconded by Commissioner Perry and unanimously passed.

Loganbill Hog Operation

Mr. Mohammadi informed the commission the Loganbill Hog Operation is an unclassified hog animal feeding operation located in Cooper County. Hog operations at this site have been the subject of complaints and hog waste spills over the last several years. In April 1997, a fish kill occurred due to over-application of hog wastes and in December 1997 and August 1998 hog wastes from the farming operation under the previous owner were discharged into surface waters of the state. These violations of Missouri Clean Water Law were resolved through informal action.

One of the more recent releases occurred in October 2000 in which hog wastes were over-applied on a 25-acre land application site resulting in degradation to two unnamed tributaries of Pisgah Creek. Violations included discharging without a permit, polluting and violating water quality standards. An Offer to Settle Letter, containing payment of a civil penalty was sent to the responsible parties on November 16, 2000. The parties have been essentially faulting each other for the mishap. The custom applicator is convinced he should shoulder no penalty and the owner and lessee cannot agree. In the interim, a department inspection in response to another complaint revealed that one of the hog waste lagoons had discharged on or about March 2, 2001. The department inspection also revealed 13 hog carcasses improperly disposed of. Currently, neither the lessee nor his attorney has responded constructively to the department's offer to settle.

Mr. Mohammadi recommended the matter be referred to the Office of the Attorney General.

No one was present representing the Loganbill Hog Operation.

Commissioner Perry moved to **refer the Loganbill Hog Operation to the Office of the Attorney General for appropriate legal action**; seconded by Commissioner Kelly and unanimously passed.

Commission Action on May 23, 2001 Meeting Minutes

Commissioner Kelly moved to **approve the May 23, 2001 minutes as submitted by staff**; seconded by Commissioner Greene and unanimously approved.

Other

Commissioner Hegi voiced his thanks to Brad Willett of BASF for the tour given to the commission yesterday.

Chairman Herrmann added his thanks for Mr. Willett's invitation to the commission.

Mr. Willett noted the commission is welcome any time.

Election of Officers

Scott Totten, Interim Director, informed the commission they are required to elect officers at least annually. He asked for nominations for Chairman of the commission.

Commissioner Greene **nominated Tom Herrmann for Chairman**; seconded by Commissioner Perry and passed with Chairman Herrmann abstaining.

Commissioner Kelly **nominated Davis Minton for Vice-Chairman**; seconded by Commissioner Perry and unanimously passed.

Nonpoint Source Management Plan Revisions

John Madras, Chief of the Water Pollution Control Program Planning Section, reported the update of the Nonpoint Source Management Plan was completed last year. The plan includes a provision that selected parts of the plan will be reviewed and revised as necessary every year. The entire plan will be reviewed and updated over the course of a five-year period. The nonpoint source assessment and funding sections were identified to be reviewed this year. Other sections will be reviewed in subsequent years.

Two major changes to the monitoring portion were the fixed station monitoring network and the volunteer water quality monitoring program. These were revised to reflect the current numbers of stations regarding ambient monitoring and volunteers with regard to the volunteer effort.

Fish tissue monitoring may be subject to future changes. Mr. Madras reported the traditional pesticides being monitored do not need as much attention because their fish tissue concentrations have been declining, there has been an increased awareness and increase in prevalence in mercury contamination of fish tissue. The monitoring of mercury in fish is being increased.

Commissioner Perry asked what this increase is attributed to.

Mr. Madras responded the predominant source appears to be air deposition so it is likely that most of the mercury in Missouri waters does not originate locally.

There has been an increase in funding attention to impaired waters and that is reflected in the document. Mr. Madras continued there is also a change in funding for groundwater wells in Jasper and Newton County. Additional changes regarding the guidance on how impaired waters are addressed may be impending.

Responding to Commissioner Hegi, Mr. Madras stated there was a current lawsuit in federal court dealing with the rules that EPA finalized last summer that were slated to become effective October 1, 2001. EPA petitioned the court to delay the proceedings of that lawsuit 18 months so they could rethink the rule. There may be additional guidance from EPA on how to deal with the impaired waters lists and other activities related to TMDLs. Staff is proceeding knowing that how the list will be prepared will probably change.

Mr. Madras concluded that the funding section also identifies the anticipated funding levels for 2003-2005.

Commissioner Greene moved to **approve the revisions to the Nonpoint Source Management Plan as recommended by staff**; seconded by Commissioner Kelly and unanimously passed.

Nonpoint Source Targeted Projects

Mr. Madras reported part of the guidance from the Environmental Protection Agency for the additional Nonpoint Source funding was that it be applied to watersheds that are listed as impaired. Staff has prepared a targeted request for proposals for projects specifically around the Elk River Basin where problems are caused by nutrients.

Four projects were received in response to this request for proposals. Mr. Madras stated three of the four projects are recommended for funding. The fourth was a stormwater related project in Joplin that did not meet the basic grant eligibility criteria.

Commissioner Perry stated she believes it is extremely important to have some 319 projects to work with the producers on the phosphorus problem. She indicated she was not opposed to funding but believes the approach is seriously flawed and had the following comments. There are many letters from those that receive poultry products but there are none from the producers. These are the individuals that should be worked with to lower phosphorus levels. It is extremely important to get farmers to sign on and to have a vested interest in the project or it will not work. They need to be brought to the table so solutions to the phosphorus problems can be developed. Commissioner Perry provided a copy of Wisconsin's multi-agency supported education program on nutrient management. A quote from this document is "acts of conservation without motivation and skills based on knowledge are futile."

Commissioner Perry noted review of the program's report shows there is about \$13,000 being put into a report and \$9 put into testing. \$900 worth of testing is to be done for pH but not phosphorus. Labor for taking these tests is to cost \$670. Commissioner Perry said the report was extremely tilted toward the government employee getting a lot of pay and not focused on working with the grower to solve the problem. She encouraged adding a lot more testing to the grant. Commissioner Perry noted the education component of \$500,000 was well done.

Commissioner Perry reported that Wisconsin has reorganized their DNR in terms of the watersheds they have developed. They meet with the growers on a monthly basis and have a full time Extension person who coordinates all of the agencies involved and they have significantly reduced their phosphorus levels. The emphasis is on cooperation rather than regulation. The director of Extension believes he gets \$15 worth of service for every dollar that is spent on the one coordinator.

Commissioner Perry asked for much more emphasis on the growers and the plans on how staff will work with them rather than just handing them a management plan. She concluded that particular emphasis needs to be placed on testing.

Commissioner Greene asked if Commissioner Perry was referring to a particular project.

Commissioner Perry responded she is referring to number one where the product from this is to be development of nutrient management plans on 100 farms. She continued lowering phosphorus levels should come first for the end product to be to save the environment. The focus is on paper and not on people and fixing problems.

Commissioner Greene asked if this project should not be funded without revisions.

Commissioner Perry responded we are spending more on two cell phones in the first year than we are on testing. \$3,000 is being spent on soil probes, \$925 for soil and litter sampling, total travel is \$9,900, labor for soil samples is \$25,000, \$4,000 for expenses, for a total of \$29,000 to take \$900 worth of soil samples.

Chairman Herrmann asked Mr. Madras what kind of revisions he had in mind.

Mr. Madras noted this proposal could be held for revision by the sponsor so it can be brought back to the commission at some point in the future.

Commissioner Greene asked what the revisions were that staff proposed.

Mr. Madras noted they were not as extensive as Commissioner Perry's recommendations.

Commissioner Hegi informed the commission he found out yesterday of the existence of the Water Quality Coordinating Committee where these types of issues are discussed. He continued he attended a meeting last week at Crowder College where phosphates in Southwest Missouri were discussed. Commissioner Hegi continued that Missouri has 14,000 tons of surplus phosphate in the form of chicken litter and hauling out of the area is being discussed. He noted the problem is tremendous and the problem will not be solved anytime soon. Commissioner Hegi asked for the purpose and results of all the 319 grants for the last five years.

Commissioner Perry noted she believes Wisconsin has done some of the legwork already. Everyone has to work on the processes that are going to solve the problem and get them to buy into the processes. All agencies need to coordinate this effort. She suggested staff talk to Wisconsin.

Commissioner Hegi noted he is not against this particular proposal but Commissioner Perry does have some legitimate issues.

Commissioner Perry noted proposal number two could go further on the educational component and there is no testing included in the compost project. She also suggested considering other options such as Australia selling chicken litter for gardens.

Commissioner Hegi reported North Carolina State, of which the University of Missouri is an associate member, publishes an excellent bulletin. They have done pelletizing, composting and other work.

Chairman Herrmann asked if the recommendation is to table approval on proposals number one and two with revisions to be determined and brought back to the commission.

Commissioner Hegi asked if there is a time limit on 319 projects.

Mr. Madras responded time is not critical. Nonpoint source grants have been made for up to five years. Usually federal money can be used over a period of seven years.

Commissioner Hegi noted he agrees with Commissioner Perry's statements. He believes everyone is going in different directions on this issue.

Commissioner Greene moved to **fund project number three and postpone action on projects number one and two pending revisions being brought to the commission at a future commission meeting**; seconded by Commissioner Perry and unanimously passed.

Commissioner Hegi asked who developed the proposal.

Mr. Madras responded it was the soil and water district with NRCS support.

Commissioner Perry indicated she would be happy to provide contacts to help coordinate.

Commissioner Hegi also noted his willingness to help with this issue. He also asked to be kept up-to-date on issues rather than being asked to take action on issues he is not informed about.

Continuing Planning Process Update

Mr. Madras reported Carol Garey has reviewed the state's Continuing Planning Process and developed the proposed revisions to the process. He noted the Continuing Planning Process is one of the requirements of the Federal Clean Water Act for every state to maintain.

Comments are being solicited on the draft. Staff anticipates bringing a final document to the commission for approval later in the year.

Carol Garey, Water Pollution Control Program Planning Section, gave a Power Point presentation on the Continuing Planning Process.

Commissioner Perry noted this is a tremendous undertaking and it is a very good resource and has a good level of specificity. She noted there is a problem in that things keep changing daily. She asked how often staff believes the document will need to be revised.

Ms. Garey responded it will be revised once a year with a complete revision done every five years.

Mr. Totten commented he worked for the Water Pollution Control Program when this document was previously revised. It was a major undertaking at that time to incorporate in one document everything that occurs in the water pollution control arena and our partners and how that works together. Mr. Totten noted a recent graduate with an environmental background of the University of Missouri School of Journalism, Jessica Little, edited this document to make it easier to understand. He asked that understandability also be considered during review.

Chairman Herrmann stated this is a tremendous job and the commission appreciates the effort and the degree of completeness in the document.

303(d) List Development Reviews and Status Report

Mr. Madras reported the draft July 6 303(d) list public notice provided to the commission was not issued. There were concerns that the information would not reach individuals in time to prepare for the meetings. The issuance of the notice was postponed until adequate notice can be given.

Mr. Madras informed the commission the public notice issued at the end of March for a 60-day period solicited both candidate waters and comments on the methodology document. Changes based on comments were incorporated into the methodology document. Some of the waters were incorporated into the draft list. This is a working list and other changes will be made. This list was separated into a proposed list with waters that staff felt had substantive data supporting a listing of impaired. The second part of the list was those waters proposed during the comment period but for which staff felt there was not adequate data to support listing as impaired. Mr. Madras asked for further comments are solicited to support or refute the proposal to list these waters as impaired. If there are other waters that do not appear on either list, staff wants to see those. Staff has not yet scheduled issuance of the next public notice.

Water Quality Standards Revisions Process and Status Report

The Missouri Water Quality Standards are being revised to address deficiencies EPA identified in their review and additional questions that have come up. Mr. Madras reported staff held a series of stakeholder meetings. Changes discussed at the meetings were those in response to EPA's comments as well as Aquatic Mitigation Resource Guidelines, Channel Modification Guidelines, and other types of best management practices that have been suggested to be incorporated into the standards.

Mr. Madras informed the commission staff is putting together a rule package to address these changes. He asked for any comments commission members may have as guidance for staff.

The prospect of designating all Missouri waters as whole-body-contact recreation is the issue where there is the most interest. Mr. Madras stated staff does not want to advocate a particular position on that that would immediately require universal disinfection. Along with that proposal a process was incorporated where a streamlined use attainability analysis could be done as part of this.

James Gasich, General Manager for the Lake St. Louis Community Association, reported he addressed the commission at its February meeting and noted the concerns of Lake St. Louis regarding package treatment plants along Perique Creek. He noted he responded to a permit public notice and received a response letter from the Water Pollution Control Program Permit Section. This letter stated an analysis shows discharges to Perique Creek can be accommodated while maintaining water quality. Mr. Gasich stated he doubts Perique Creek is able to handle all of the package treatment plants that are accumulating in the Perique Creek watershed. He noted there is much concern about these package treatment plants and they are looking for assistance in this regard. Mr. Gasich concluded by asking how Perique Creek can be placed on the 303(d) list.

Chairman Herrmann asked if Lake St. Louis is represented on the rulemaking stakeholder group.

Mr. Madras responded they are and staff has also heard from the Department of Conservation regarding problems with Perique Creek.

Rhonda Ferrett, Lake St. Louis Alderman, requested that Perique Creek be named a metropolitan no-discharge stream. Ms. Ferrett noted in many instances the existence of the package treatment plants is not known. She continued that they just learned there is a land application of biosolids processing area on Smith Creek, a tributary to Perique Creek. The permit allows for one million gallons of sewage to be applied to the land. Ms. Ferrett noted

she is concerned about rain events moving this into Peruque Creek. She continued they are looking for a way to enforce planned growth.

Ms. Ferrett noted another concern is that the standards do not contain nutrient data so there is no measurement of nitrogen or phosphorus. She provided a petition of residents asking for the no-discharge status and better control of package treatment plants. Ms. Ferrett stated they are working with St. Charles County and the County Commission on the no-discharge issue. This extends only into St. Charles County. They are also working on creating stricter standards than DNR allows in St. Charles County.

Responding to Chairman Herrmann's question, Mr. Laux stated the regional office drafted the original requirements of the land application permit and it was then reviewed by the central office land application unit prior to issuance.

Ray Grossmann, Chairman of the Lake St. Louis Engineering and Facilities Committee, informed the commission Peruque Creek flows for 29 miles into the Mississippi River and covers 50,000 acres and 80 square miles. 17 miles of the creek flows into Lake St. Louis that is a 550 acre lake having 480 lakefront homes. There is a total of 3,000 homes within the community association with a population of 10,500. Since 1987, 365,000 cubic yards of silt has been removed from Lake St. Louis costing about \$1,100,000.

Commissioner Hegi asked where the silt is coming from.

Mr. Grossmann responded the majority of it comes down Peruque Creek from agriculture and land development. He continued the package treatment plants are of great concern. The lake is whole-body-contact with sewage contaminating it. Mr. Grossmann reported they took two water samples per month for four months last year. At times there is no flow in Peruque Creek. Mr. Grossmann asked how they can get assistance to protect the creek.

Chairman Herrmann noted that concerns need to be taken up with John Madras for revisions to the Chapter 7 rules.

Commissioner Hegi asked if the package plants are meeting any kind of discharge requirements.

Mr. Gasich stated the response he received from staff was that both ammonia and biochemical oxygen demand are limited in the permits that should protect the receiving water body and its designated uses. He noted that without a TMDL study being completed on Peruque Creek how could staff assess that all of this will be okay for the creek.

Mr. Laux reported staff reviewed the current loadings that would be permitted so they used the current values that would be allowed in the discharge. The current facilities that are

already in existence, being constructed under construction permits, or proposed for issuance of construction permits would probably take up the assimilative capacity of the stream but were not over what the staff considered the assimilative capacity of the stream. Additional facilities may have to meet standards that are more stringent than the current standards or the stream may have to be placed on the 303(d) list. Mr. Laux noted he does not believe staff presently has data sufficient to list Peruque Creek as a 303(d) stream although it's on the proposed list.

Commissioner Greene encouraged Mr. Madras to work with these individuals so they know exactly what they need to gather the necessary data.

Ms. Ferrett asked why the stream has to be impaired before it can be cleaned up.

Commissioner Greene responded there has to be data available for any decision and if that's missing it needs to be developed. She agreed we need to be proactive.

Mr. Madras stated staff wants to be able to address questions like this through the permit process rather than through the impaired waters list. The study staff did had a lot of conservative assumptions built into it and permits can be written to protect the ammonia levels and the dissolved oxygen levels in the creek. The one thing not in rule now is direction on how to deal with nutrients because that will be the major thing that staff looks at. There is not an in-stream standard for nutrients or an in-lake standard for clarity. Mr. Madras stated EPA has promised that there will be in-stream standards for nutrients both for streams and lakes over the next 3-5 years. Staff will be required to incorporate those into the standards. Mr. Madras noted if agreement is reached and they meet EPA's requirements, staff would not need to wait for EPA's direction to do this.

Chairman Herrmann replied they desire to include Peruque Creek as a metropolitan no-discharge stream through the Water Quality Standards changes.

Mr. Madras responded this has been discussed and a decision has not yet been made as to whether this is the direction to take.

Commissioner Perry asked if the technology exists where these package plants can treat in a way so that no-discharge is economically feasible.

Mr. Madras replied that would be the technology staff would look for but would not necessarily be a package plant.

Ken Midkiff, Ozark Chapter Sierra Club, supported the request of metropolitan no-discharge stream for Peruque Creek. He continued that a rulemaking to give staff the authority to put

stricter limits on low or no-flow streams where there are a number of discharges that add up to the flow of the stream during certain periods of the year had been discussed. This might be a solution to future problems of this nature.

Phase II Stormwater Update

Phil Schroeder, Chief of the Water Pollution Control Program Permit Section, reported on staff efforts to bring the Clean Water Commission stormwater regulation in line with recent federal regulation changes effecting how permitting is done. EPA promulgated rules in 1999 requiring stormwater permits on construction sites between one and five acres in size and on municipal separate stormwater systems in urbanized areas serving populations of less than 100,000. Phase one of this effort was promulgated in state rules in 1992 giving staff the authority to require permits on construction sites of five acres or more and for permits in municipalities having populations of less than 100,000. Mr. Schroeder reported this new rulemaking will also allow staff to offer some permit exemptions on industries that can prevent their facilities from having stormwater come into contact with any products that they produce. Missouri must develop the phase II program and issue permits within three years of the final federal rule. Permits on construction sites between one and five acres in size are required to be permitted by December 2002. Permits on the smaller municipalities are due by March 2003. This rule will help identify and eliminate several sources of water pollution from smaller urbanized areas and from smaller construction sites. Six minimum control measures are included in the program and places the burden on municipalities and construction sites to utilize best management practices to prevent pollution. The rules will also clarify how permitting will be administered in areas where several municipalities may wish to combine programs or where smaller municipalities want to defer program administration to larger adjacent municipalities with existing programs. Mr. Schroeder noted an example of this is areas in the Metropolitan Sewer District where they may want to combine their efforts with the Metropolitan St. Louis Sewer District. The rule will also establish the type of permits that will be made available for newly regulated groups.

This rulemaking will affect all developers and construction projects disturbing between one and five acres; and all municipalities with populations of less than 100,000. Municipalities with populations less than 10,000 may be exempted from these requirements where they can show that there are no water quality impacts associated with their activities or where they may not be significantly influencing another municipality that is covered by these rules. In Missouri, several thousand new construction sites will require storm water permits and about two hundred and forty-five municipalities, counties and townships will be required to develop a Phase II storm water program. The federal rules also specify that EPA may designate additional entities as requiring a permit if needed to ensure protection from storm water discharges. There is an exemption in the federal rule for certain industrial activities that protect their byproducts and waste products from stormwater contact. Up to 40% of industrial permits may qualify for this.

The type of permit offered by Missouri will determine the amount paid in permit application fees. The probable type will be a general permit for both land disturbance and the municipal storm water permits. Another alternative may be permit-by-rule which is a new alternative under the Clean Water Law. This allows granting a permit if a rule is written that specifies the type of requirements that the entity must follow. Discussions are on-going with the Home Builders Association in this regard and they may request staff move in this direction. Fees on general permits for land disturbance were established in the 2000 legislative session at \$300 for a five-year permit. Site-specific fees will cost from \$1,350 to \$2,350 depending on the size of the area. Permit-by-rule could be done for a fee of \$25.

Mr. Schroeder reported the Water Pollution Control Program conducted two very productive stakeholder meetings to discuss the details of the rulemaking. Stakeholders included developers, environmental groups, consultants, and engineers. The last meeting occurred June 14, 2001 and a draft rule has been forwarded to department management to begin the rulemaking process. Staff anticipates publication of the proposed rulemaking in the October 15 *Missouri Register*. A hearing on the draft rulemaking is planned before the Clean Water Commission on November 28, 2001 with a final rule effective May 30, 2002. This would allow staff time to process applications to be issued by the end of 2002.

Missouri Conservation Heritage Foundation Stream Stewardship Trust Fund

Mr. Madras reported in 404 permits and water quality certifications applicants often need to provide mitigation. The Missouri Conservation Heritage Foundation has set up a system where people can provide mitigation or other stream enhancements.

Bob Ziehmer, Missouri Department of Conservation, provided a Power Point presentation on the Missouri Conservation Heritage Foundation Stream Stewardship Trust Fund.

Other

Referral Process

Kevin Perry, President of REGFORM, stated he became concerned during the enforcement referrals made earlier today. He noted these issues impact the individuals REGFORM represents. Mr. Perry noted several commissioners asked during the referral process whether or not referral to the Attorney General's Office would expedite a solution to the issue. He stated expeditious review of the issues is not the only thing that should be considered by the commission. He noted his remarks do not apply to recalcitrants that were referred to earlier. Mr. Perry stated three unintended consequences of having some of the issues deliberated by others beside the commission are: the department is less likely to vigorously pursue conference, conciliation and persuasion; empowers the Attorney General's Office to set

policy for the state on water issues; and it costs everyone more money. He stated the commission has demonstrated its willingness to work on substantive issues and to be fair. He asked that the commission give future issues a little more consideration when making decisions on whether or not to refer to the Attorney General's Office.

Chairman Herrmann replied Mr. Shorr put the matter in the context of a legal decision when he said there was no documented evidence. He noted apparently there was negotiation between the parties regarding a settlement. Chairman Herrmann stated from his perspective, the commission as a body cannot make legal decisions and be on sound footing.

Mr. Perry replied he understands that and does not want to imply that the commission is ducking the issue. He asked that the commission reconsider the view that the commission does not have the capability to consider legal issues. To do otherwise causes results that over time accrete.

Commissioner Greene responded she believes the department does an outstanding job of conference, conciliation and persuasion. She continued that as a member of the general public, she believes most of the cases are drawn out much too long when there is damage to the environment occurring and should be referred even earlier. Commissioner Greene noted in the particular case today, negotiations had ceased and there is no other option but to refer the matter. She stated the inference that the commission just pushed the matter on bothers her because nothing was happening and there is no other alternative available.

Tad Kardis, Assistant Attorney General, reiterated that when the staff comes to the commission with a request for referral staff is telling the commission that attempts at conference, conciliation and persuasion have failed. Mr. Kardis continued that delayed referrals could lead to ongoing harm to the environment and also create statute of limitation problems for the cause of action that results from the violation. He noted that Missouri has a very short statute of limitations on these violations and it's imperative that referrals be prompt once the department's attempts to achieve a negotiated resolution have failed.

Commissioner Perry discussed the comment that in referring a matter the commission is allowing the Attorney General's Office to address issues of policy that should otherwise be addressed by the commission. She noted that through making inquiries the commission ensures they do not do this. Commissioner Perry added it became clear this was a matter of a number negotiation over a fine and the most efficient and cost-effective way to negotiate this is to have a judge handle the issue. She stated she takes issue with these remarks because she believes the commission is very cognizant of who should be setting policy.

HB 453 and HB 501

Mr. Midkiff reported HB 453 and HB 501 contained language that the department shall certify without conditions nationwide permits the Corps of Engineers issues to the Missouri Department of Transportation. He reported the Sierra Club asked Governor Holden to veto those two bills along with a number of other environmental conservation and water quality protection groups. The Governor has directed the Missouri Department of Natural Resources and the Missouri Department of Transportation to draft a Memorandum of Understanding so that there would be a prereview by the department. Mr. Midkiff stated the Sierra Club essentially agreed this is probably better than what now exists and is satisfied that this issue was adequately resolved.

Phosphorus

Mr. Midkiff supported Commissioner Perry and Hegi's thoughts on phosphorus. He noted a member of the Natural Resource Conservation Service Technical Committee to develop the phosphorus standard said he needs to know, as a farmer, how much phosphorus he needs to apply to a piece of land for optimal growth of a crop. He's looking at crop production not waste disposal. Mr. Midkiff noted there was a suggestion somewhere that 40 to 60 percent of the current chicken litter needs to be removed from the Elk River Basin and transferred elsewhere. He concluded that it is appropriate that any attempt to address water quality issues in southern Missouri through incentive-based funding address the primary concern of how much is applied to the land.

Legislative Update

Mr. Totten reported HB 453 and HB 501 included language that the department would certify without conditions any 404 nationwide permits that the Corps of Engineers issued to the Missouri Department of Transportation for any of their projects. A Memorandum of Understanding with the Department of Transportation has existed for a number of years for wetlands mitigation. Staff had been working on renewing that agreement which had recently expired by including the streambank mitigation provisions that Mr. Ziehmer explained earlier. Included in the agreement for planning and construction purposes are best management practices for Department of Transportation projects. Mr. Totten explained, for any 404 permit applicant, staff would typically see the project after it was substantially designed. Staff will now be involved in the planning process in order to let people know what they would like to see in their projects ahead of schedule.

Legislation included resolution of the issue with Pulaski County and the Moates case to provide local authority to require connection to a regional sewer system. That bill also included our bond authority for the next round of State Revolving Fund projects.

Chairman Herrmann asked whether SB 15 passed.

Mr. Totten related the bill regarding the makeup of the Clean Water Commission as well as the bill related to third party appeals did not pass.

Water Pollution Control Program Director

A nationwide search is being made for a new director.

Penalties

Commissioner Hegi asked where the money from penalties goes.

Mr. Totten responded any penalties collected go to the local school district.

Commissioner Perry noted that any school district receiving money from penalty payments has its state payment reduced by that amount so it does not increase the amount of money the local schools get.

Mr. Totten noted it merely offsets and allows the state education board to reduce the amount of their support to that local district by the amount of penalties collected.

Commissioner Hegi stated he resents the fact that they are asked to vote on sending these cases to the Attorney General's Office without knowing the amount of the offer that was made.

Mr. Totten stated this can be discussed during closed session.

Department Restructuring

Mr. Totten informed the commission Mr. Mahfood is still looking at alternatives. He hopes to elevate the Technical Assistance Program within the Division of Environmental Quality and create an assistance center to serve the entire department. He's looking at the size of the Division of Environmental Quality and looking to split the division into an air and land division and a water division. Mr. Mahfood believes this will provide him greater support by having a few additional midlevel managers. A public announcement should be made August 1.

Closed Session

Commissioner Perry moved to **go into closed session** at approximately 1:35 p.m. to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions

under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Greene and unanimously passed.

Commissioner Greene moved to **return to open session**; seconded by Commissioner Perry and unanimously passed.

Legal Matters

Dismissal With Prejudice of Appeal 324 Festus/Crystal City Abatement Order 000921

Commissioner Greene moved to **dismiss Festus/Crystal City Abatement Order Appeal 324**; seconded by Commissioner Kelly and unanimously passed.

Dismissal of Appeal 348 GenCorp, Inc. MO-0103691

Commissioner Perry moved to **dismiss GenCorp, Inc. Permit Appeal 348**; seconded by Commissioner Greene and unanimously passed.

There being no further business to come before the commission, Chairman Herrmann dismissed the July 18, 2001 meeting at approximately 2:05 p.m.

Respectfully submitted,

Scott B. Totten
Interim Director